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11 ARCHWAY BROADWAY LOAN SPE, LLC

12 **UNITED STATES BANKRUPTCY COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 **LOS ANGELES DIVISION**

15 In re Lead Case No. 2:24-bk-12079-VZ

16 SEATON INVESTMENTS, LLC, *et al.*, Jointly Administered with Case Nos.:

17 Debtors and Debtors-in- 2:24-bk-12080-VZ; 2:24-bk-12081-VZ;
18 Possession. 2:24-bk-12082-VZ; 2:24-bk-12091-VZ;
19 2:24-bk-12074-VZ; 2:24-bk-12075-VZ; and
20 2:24-bk-12076-VZ

21 Affects:

22 All Debtors
23 Seaton Investments, LLC
24 Colyton Investments, LLC
25 Broadway Avenue Investments, LLC
26 SLA Investments, LLC
27 Negev Investments, LLC
28 Alan Gomperts
 Daniel Halevy
 Susan Halevy

Chapter 11

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
ARCHWAY BROADWAY LOAN SPE,
LLC'S RENEWED MOTION FOR
RELIEF FROM AUTOMATIC STAY**

Date: December 10, 2024
Time: 10:30 a.m.
Crtrm.: 1368
255 E. Temple Street
Los Angeles, CA 90012

Hon. Vincent P. Zurzolo

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1 **I. Introduction¹**

2 In previous dueling motions, Broadway's main secured creditor Archway moved to lift the
3 stay. And Broadway countered, not once but twice, with companion motions to approve a lease
4 and DIP financing associated with that lease. Broadway had an obligation to present to this Court
5 admissible evidence that confirmation of its plan is now "assured" based on a lease that is feasible
6 and adequately protects Archway.

7 Instead, it presented to this Court Mr. Schwarcz—a felon convicted in connection with a
8 money laundering conspiracy involving narcotics.

9 Knowingly.

10 Twice.

11 And, Broadway has now admitted not only to that prior knowledge that one of the prime
12 movers of its "assured" plan, Mr. Schwarcz, is a felon and disbarred lawyer, but also that *it did not*
13 *know* that the other prime promoter, Mr. Bombola, who supposedly was to orchestrate the finances
14 and handle all of the money, has been found in contempt by the United States District Court for
15 the Eastern District of Oklahoma *for stealing assets* from a receivership just earlier this year.²

16 The Court denied Archway's original motion for relief from stay without prejudice, based
17 on the proposed lease and loan that Broadway had presented to the Court as a "huge win for
18 Broadway." Under the proposed lease, the proposed tenants Zenith and DMB—run by
19

20 ¹ Secured creditor, Archway Broadway Loan SPE, LLC, a Delaware limited liability
21 company, successor in interest to Archway Real Estate Income Fund I REIT, LLC ("Archway"),
22 submits this Memorandum of Points and Authorities in support of its Renewed Motion for Relief
23 From Automatic Stay ("Motion") (Dkt. pending) filed in the lead case of those jointly-
24 administered debtors, Seaton Investments, LLC ("Seaton"), Colyton Investments, LLC
25 ("Colyton"), Broadway Avenue Investments, LLC ("Broadway"), SLA Investments, LLC
("SLA"), and Negev Investments, LLC ("Negev" and collectively with Seaton, Colyton,
26 Broadway and SLA, the "Corporate Debtors") and Alan Gomperts ("Mr. Gomperts"), Daniel
Halevy ("Mr. Halevy"), and Susan Halevy ("Ms. Halevy" and collectively with Mr. Gomperts and
27 Mr. Halevy, the "Individual Debtors" and collectively with the Corporate Debtors, the "Debtors").

28 ² Under a surprisingly similar structure. It is an interesting question of what is worse:
knowingly presenting to this Court a convicted criminal, a money launderer, or ***not knowing*** that
a federal court has found that the other main promoter in this lease arrangement was in contempt
for stealing assets from a federal receivership and then lying to the receiver about it?

1 Mr. Schwarcz and Mr. Bombola—were supposed to be responsible for collecting government
2 grant money and using it to pay Archway under the plan. Archway had been asking for financials
3 for the proposed tenants for months, without anything being provided.

4 This was puzzling. So, Archway did some internet sleuthing. It turns out that the proposed
5 tenants have some skeletons in their closets.

6 Just a few months ago, Mr. Bombola (manager of Zenith) was held in contempt by a
7 federal court for **stealing assets from a federal receivership** estate and then lying to the Receiver
8 about it. Mr. Schwarcz (CEO of DMB) was convicted in connection with **criminal money**
9 **laundering conspiracy** connected to narcotics sales—a felony which got him disbarred.

10 Broadway's manager, Mr. Gomperts, knew about Schwarcz's checkered past **before** he
11 filed the Lease Motion (in fact, the plan was to hide Mr. Schwarcz's connections to DMB). And
12 Mr. Gomperts had no clue about Mr. Bombola, even though that information was readily available
13 on the internet and which Archway found within a matter of hours on a Friday afternoon.

14 Meanwhile the tenants and DIP lender (who also has a significant list of FINRA
15 complaints) are ducking service of Archway's discovery.

16 In short, this entire lease concept has been exposed as the unworkable and foundationless
17 sham that it is. Archway now renews its motion to lift the stay. Broadway admits that there is no
18 equity.

19 Caught red-handed with the charade involving the criminals and thief-contemnors
20 Mr. Schwarcz and Mr. Bombola, Broadway tried to withdraw its lease and DIP financing motions.
21 The Court however nonetheless denied those motions this morning.

22 Archway renews its call for the Court to terminate the stay.

23 **II. Background**

24 The full background of this matter is set forth in the Supplemental Declaration of Bobby
25 Khorshidi.

26 The following reflects the relevant new information since the Court denied Archway's
27 Original Motion.

28

1 **A. The Court Denies Archway's Original Motion for Relief From Stay Based on**
2 **Broadway's Lease and Loan Motions.**

3 On October 8, 2024, Archway filed a Motion for Relief from Stay as to the Broadway
4 Property ("Original Motion") (Dkt. 213).

5 The following week, Broadway filed an opposition ("Opposition") (Dkt. 220) stating that it
6 had developed a "visionary plan" that was "eminently confirmable" based on a DIP loan ("Loan")
7 and long-term lease of the Broadway Property ("Lease"). *See* Opposition at 3:1–4. Broadway
8 touted the reorganization plan, based on the Lease and Loan, as follows:

9 The plan will be based upon a 15-year lease with options to extend that is
10 contingent only upon this Court's approval of a \$4 million DIP loan that does not
11 seek to prime any secured creditor. The Lease is backed by a creditworthy tenant
12 and projects plan payments to Archway that are both fair and feasible.

13 Opposition Dkt. 220 6:6–9.

14 Archway filed a reply ("Reply") (Dkt. 231), pointing out, among other things, that no
15 motions to approve the Lease or Loan had been filed.

16 Two days after the Reply was filed, Broadway filed motions to approve the Lease and
17 Loan (Dkts. 233, 237), along with applications for orders shortening time ("OSTs") (Dkts. 236,
18 242).

19 The Court denied the OSTs (Dkts. 243, 244), but, the day before the hearing on Archway's
20 Original Motion, Broadway filed two noticed motions—(1) an *Amended Motion of Debtor and*
21 *Debtor in Possession Broadway Avenue Investments, LLC for Order Authorizing Debtor to Enter*
22 *into Post-Petition Lease* (Dkt. 248) ("Lease Motion") and (2) an *Amended Motion of Debtor and*
23 *Debtor in Possession Broadway Avenue Investments, LLC for Order Authorizing Debtor to Obtain*
24 *Post-Petition Financing Pursuant to 11 U.S.C. Section 364* (Dkt. 253) ("Loan Motion").

25 The Lease Motion sought approval of a Lease with three tenants—Zenith Healthcare
26 Management, LLC dba Broadway Community Care Centers ("Zenith"), The DMB Fund
27 ("DMB"), and Levav Group LLC ("Levav" and collectively, the "Proposed Tenants"). The Loan
28 Motion sought to approve a DIP loan from Honor Enterprise Funding LLC ("DIP Lender").

At the hearing on October 29, the Court denied Archway's Original Motion, indicating that under § 362(d)(2), Broadway had met its burden to show an effective reorganization in prospect based on the Lease and Loan, which were at that time being proposed pending hearings on the Lease and Loan Motions set for November 19, 2024. *See Declaration of Gerrick M. Warrington ("Warrington Declaration") Exh. 9.*

B. Archway Uncovers New Information Concerning the Proposed Tenants.

On November 5, 2024, Broadway filed oppositions to the Lease and Loan Motions. *See Dkts. 279 ("Lease Opposition") and 280 ("Loan Opposition").*

In the Lease Opposition, Archway exposed significant new information (collectively, "New Information") concerning the troubling backgrounds of Broadway's "team"—i.e., the Proposed Tenants and DIP Lender—which background included:

- Zenith's principal, Steve Bombola, being held in **contempt**—in July 2024—for **stealing assets** from a federal receivership and then lying to the Receiver about it.
- DMB's principal, David Schwarcz, being convicted in a **money laundering conspiracy**—a felony that got him disbarred.

See, generally, Warrington Declaration.

None of this New Information was ever disclosed by Broadway.

C. Archway Serves Discovery on the Proposed Tenants, But They Duck Service.

On November 12, 2024, Archway issued subpoenas to the Proposed Tenants and DIP Lender, seeking information related to the Lease and Loan Motions.

Efforts by the registered process servers were unsuccessful because either the address was a mailbox store (Levav), or the person said it was the wrong address (Levav, DMB), that they have never heard of the entity being served (Zenith), or they simply did not answer (DMB, Honor).

D. Broadway's Counsel Confirms What Was Known and Not Known.

In the morning of November 12, 2024, the deadline for Broadway to file its replies in support of the Lease and Loan Motions, Broadway's counsel, Mr. Derrick Talerico, spoke with Archway's counsel, Mr. Gerrick Warrington, on the phone. Warrington Decl., ¶ 25. During that call, Mr. Talerico told Mr. Warrington that he and Broadway's manager, Mr. Gomperts, had

1 learned about Mr. Schwarcz's problematic past about a month ago—*prior to* Broadway's filing
2 the Lease and Loan Motions. Warrington Decl., ¶ 26.

3 Mr. Talerico explained that when they learned about Mr. Schwarcz's troubling past, they
4 had him “remove himself” as an officer of DMB. Warrington Decl., ¶ 27. Indeed, the records of
5 the California Secretary of State reflect that on November 5, 2024, at 9:11 a.m. (*prior to* Archway
6 filing its Lease Opposition, which was filed at around 5:00 p.m. that day), a Statement of
7 Information was filed that removed Mr. Schwarcz and replaced him with Judy Cox as CEO.
8 Warrington Decl., ¶ 29; Exh. 27.

9 Mr. Talerico went on to explain that, although he and Mr. Gomperts knew about
10 Mr. Schwarcz, they did not know about Mr. Bombola's misdeeds. Warrington Decl., ¶ 28. That
11 was a surprise to them. But all of this New Information was obtained by Archway using internet
12 searches of **publicly available sources** over the course of a few hours on a Friday evening prior to
13 the opposition deadline to the Lease and Loan Motions. *See* Warrington Decl., ¶¶ 5–21.

14 **E. Broadway Promptly Withdraws the Lease/Loan Motions After Being Exposed.**

15 After Mr. Talerico's call with Mr. Warrington, Broadway withdrew the Lease and Loan
16 Motions (*see* Dkts. 292, 293), stating that Broadway will be filing future motions to approve “a
17 lease without all of the proposed lessees in the current Lease....” Dkt. 292 at n. 1.

18 **III. Discussion**

19 The following section sets forth the relevant legal standard and applies that standard to the
20 relevant facts, which analysis demonstrates that Archway is entitled to the relief it seeks.

21 **A. The Court should grant relief from stay under § 362(d)(2).**

22 Section 362(d)(2) provides that “the court shall grant relief from the stay ... (2) with respect
23 to a stay of an act against property under subsection (a) of this section, if-- (A) the debtor does not
24 have an equity in such property; and (B) such property is not necessary to an effective
25 reorganization....”

26 While “the party requesting such relief has the burden of proof on the issue of the debtor’s
27 equity in property[,] ... the party opposing such relief has the burden of proof on all other issues.”
28 11 U.S.C. § 362(g). Accordingly, the party opposing the relief from a stay bears the burden to

1 demonstrate that such property is necessary to an effective reorganization. *See United Sav. Ass'n
2 of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375 (1988). The party opposing
3 relief from stay must demonstrate "that the property is essential for an effective reorganization *that
4 is in prospect*. This means ... that there must be a reasonable possibility of a successful
5 reorganization within a reasonable time." *Id.* at 375–76 (citations and internal quotation marks
6 omitted). The burden of proof "is a 'moving target which is more difficult to attain as the Chapter
7 11 case progresses." *In re Sun Valley Newspapers, Inc.*, 171 B.R. 71, 75 (B.A.P. 9th Cir. 1994)
8 (citation omitted). "In the early stage of the case, the burden of proof ... is satisfied if the debtor
9 can offer sufficient evidence to indicate that a successful reorganization within a reasonable time
10 is plausible. Near the expiration of the exclusivity period, the debtor must demonstrate that a
11 successful reorganization within a reasonable time is probable. *After the expiration of the
12 exclusivity period, the debtor must offer sufficient evidence to indicate that a successful
13 reorganization within a reasonable time is assured*. Regardless of the amount of time a case has
14 been pending, if the evidence indicates that a successful reorganization within a reasonable time is
15 impossible, the court must grant relief from the stay." *Id.* (emphasis added) (citations and internal
16 quotation marks omitted).

17 **1. There is no equity in the Property.**

18 Here, Broadway admits that there is no equity in the Property. Per Broadway's schedules,
19 as of the petition date, the Property is worth \$11.5 million, and Archway is owed over \$15 million.
20 The actual amounts owed to Archway are much greater, but it does not appear to be contested that
21 the Property is significantly underwater.

22 **2. No effective reorganization within a reasonable time is "in prospect."**

23 Exclusivity has expired, and Broadway must, therefore, demonstrate with admissible
24 evidence that it is "assured" that a successful reorganization within a reasonable time is in
25 prospect. *See Sun Valley Newspapers, Inc.*, 171 B.R. at 75 (citations omitted).

26 Broadway cannot meet this very heavy burden. This single-asset-real-estate case has been
27 pending for **over 245 days**. Archway's treatment under Broadway's amended plan ("Amended
28 Plan") (Dkt. 267) **hinges entirely** on a long-term lease of the Broadway Property.

1 But the Lease and Loan Motions have been *withdrawn*. And the Amended Plan itself along
2 with circumstances surrounding the withdrawals of the Lease and Loan Motions demonstrate that
3 no effective reorganization within a reasonable time is in prospect.

4 Mr. Gomperts and his counsel *knew* about Mr. Schwarcz's criminal conviction for money
5 laundering and disbarment **prior to filing the Lease Motion**. They did not disclose that
6 information. Instead, they tried to conceal it by having Mr. Schwarcz remove himself as CEO by
7 filing an amended Statement of Information on November 5, 2024. By erasing Mr. Schwarcz's
8 connection to the proposed tenant DMB, nobody would know about his conviction related to
9 *money laundering conspiracy* connected to narcotics.

10 Just as bad, or perhaps worse, Mr. Gomperts failed to do any due diligence to vet Zenith or
11 Mr. Bombola, its manager who is presently—*right now*—is supposed to be purging his contempt
12 under a federal contempt order for his personal involvement in *stealing assets* from a federal
13 receivership and then *lying to the Receiver about it*. Had the Court approved the Lease, Zenith and
14 DMB would have been the ones entrusted with *handling government grant funding purportedly*
15 *used to fund plan payments to Archway*. See Lease § 4.06.3(B) and (D), Dkt. 220 at 21 of 77.

16 The Amended Plan is not feasible, does not have an adequate means of implementation,
17 and is not being proposed in good faith.

18 It proposes to install **Mr. Gomperts** as the post-confirmation fiduciary to these jointly-
19 administered estates. But Mr. Gomperts has an *actual*—not a potential—conflict of interest, and it
20 is clearly influencing his judgment and decision-making in this case. Not only does he owe
21 fiduciary duties to this bankruptcy estate, but he also owes fiduciary duties to *creditors* of
22 Broadway to avoid dissipating, endangering, or unduly risking corporate assets. See *Berg & Berg*
23 *Enterprises, LLC v. Boyle*, 178 Cal. App. 4th 1020, 1040–41 (2009) (providing that officers of
24 insolvent corporations owe fiduciary duties to creditors). He is required to make a mandatory
25 capital call under Broadway's Operating Agreement on the members of Broadway, including
26 himself and Ms. Halevy, to fund capital improvements to the Broadway Property from
27 their over \$60 million in net worths. Instead of fulfilling these duties, he is bending over

1 backwards to get Court approval of a Lease with **whomever** darkens his doorway—even
2 untrustworthy characters like Mr. Schwarcz and Mr. Bombola and the shell entities they control.

3 He has now gone so far as to withhold material information **from the Court** and creditors
4 and then conspired to conceal it and cover-it-up by having Mr. Schwarcz remove his connections
5 to DMB from the public record.

6 This has gone way too far.

7 **B. The Court should waive the 14-day stay imposed by Rule 4001(a)(3).**

8 Rule 4001(a)(3) accords a 14-day stay of an order granting relief from stay, “unless the
9 court orders otherwise.” Fed. R. Bankr. P. 4001(a)(3). The stay allows time to seek a stay pending
10 appeal. *See* 9 COLLIER ON BANKRUPTCY ¶ 4001.05 (R. Levin & H. J. Sommer eds., 16th ed.).

11 Here, the Court should waive the stay, as there would be a very low chance of obtaining a
12 stay pending appeal.

13 **IV. Conclusion**

14 As analyzed herein, the Court should grant the Renewed Motion in full.

15 DATED: November 19, 2024

FRANDZEL ROBINS BLOOM & CSATO, L.C.

16 MICHAEL GERARD FLETCHER

17 GERRICK M. WARRINGTON

18 By: _____ /s/ Gerrick M. Warrington

19 GERRICK M. WARRINGTON

20 Attorneys for Secured Creditor

21 ARCHWAY BROADWAY LOAN SPE, LLC

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